IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FERA APPEAL NO.44 OF 2007

Kantilal M. Jhala,
Flat No.15, 3rd Floor,
5-A, Majithia Nagar,
S.V. Road, Kandivli (W),
Mumbai - 400 067 ..Appellant

V/s.

1. Union of India,
Through the Director,
Enforcement Directorate,
Govt. of India, 6th Floor,
Lok Nayak Bhavan,
Khan Market,
New Delhi 110 003.

2. The Special Director,
Enforcement Directorate,
Govt. of India, 6th Floor,
Lok Nayak Bhavan,
Khan Market,
New Delhi 110 003. ..Respondents

Mr.A.S. Rao with Mr.B. Seshagopalan for the appellant.

Mr.A.J. Rana, senior counsel with Mrs.S.V. Bharucha for Union of India.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 5TH OCTOBER, 2007.

ORAL JUDGMENT : (Per J.P. Devadhar, J.)

1. The appellant has filed this appeal against the order of the Appellate Tribunal for Foreign Exchange dated 1st May, 2007 stating that the following questions of law arise out of the said order of the Tribunal.

1. Whether presumption under Section 72 of FERA, 1973 is available against the Appellant from the documents seized from the third party when the third party's statement have neither been relied nor supplied ?

2. Whether the Tribunal has to follow the consistent binding precedents of the Hon'ble High Court, larger and co-ordinate bench of the same Tribunal which held that presumption under Section 72 is not available from the third party documents and when the third party was not made co-noticee ?

3. Whether the Tribunal is required to pass the order without any unreasonable and unexplained delay once the oral submissions/ written submissions were made/submitted from the day of final hearing ?

4. Whether non supply of copy of statement of third party having already been decided to supply the same and whether concluding hearing by the Respondent No.2 would a proceeding in violation of principle of Natural Justice ?

5. Whether non consideration of all submissions on merit and binding judgments in ;the impugned orders would render the order as non speaking order, non reasoned order and non application of mind as held by the Apex Court and various courts ?

6. Whether non providing of cross examination of the; third party from whose premises certain alleged documents were recovered and whose statements were not relied on and supplied to the Appellant would render the impugned order as having been passed in violation of principle of natural justice ?

7. Whether the alleged confessional statement retracted in detail immediately before the Magistrate would require the Tribunal to assess the validity of the confessional as true and voluntary ?

8. Whether the Tribunal is required to consider the specific submissions made in the written submissions that the name and telephone number of the Appellant in the alleged documents seized from the third

party and give a categorical finding after calling for the original documents and satisfying the same ?

9. Whether the Tribunal is required to take into consideration of the ingredients of the provisions of FERA, 1973 and the contemporaneous documentary evidence submitted by the Appellant so as to come to the conclusion that the offence was proved ?

10. Whether the Tribunal is required to follow the precedents and non following would render the order having been passed in total disregard to the higher wisdom and whether the same would be judicial indiscipline ?

2. In this case, there was a search at the premises of Shri Punjabhai H. Shah and others on 17th December, 1991 wherein certain incriminating documents were seized. Subsequently, there was a search at the residential premises and the locker belonging to the appellant on 29th January, 1992. During the course of search carried on by the Enforcement Officers, Indian Currency amounting to Rs.10,30,000/- and Rs.4,50,000/- respectively were recovered from the appellant along with certain documents. In his statement recorded under Section 40 of the Foreign Exchange Regulation Act, 1973, the appellant inter alia stated as under :

"Regarding Rs.totaling 14,80,000/- seized from my residence and lockers, I have to state that out of this Rs.30,000/- belong to me that is my business money. Regarding remaining Rs.14,50,000/- I have to state as under :

I have got a close relative of my wife at Nairobi. His name is Mr.Jayesh Pattni, p.o.

> Box 39233, Nairobi, Tel.751320. He is doing jewellary business there. Some time in May, 1991 he informed me that he would be sending money to me in India through persons in India and I should keep with me until either he or his person would visit India and collect the same from me. He further informed that this money will be required by him in purchasing some spare parts and machinery for making ornaments. As he is close relative of my wife, I agreed to receive the money from him in India. Accordingly, I received total sum of Rs.27,00,000/- from June, 1991 to December, 1991 and out of this I paid Rs.7,50,000/- to said Jayesh Pattni when he visited me in July, 1991 and Rs.5,00,000/- to one Mr.Pamabhai or Mr.Kanabhai of Nairobi when he visited me in July, 1991. All the payments were received by me in cash at my residence from some unknown persons. Before receiving the payments, I was informed each time by Mr.Jayesh Pattni from Nairobi at my telephone No.6826025 installed at my residence that he had arranged the payments, and some person in the name of Babybhai would make the payments. Before receiving the payments, I was also receiving call from one person stating his name as Babybhai that he had received the message from Kenya to make the payments to me."

3. The aforesaid statement was retracted by the Appellant on 30th January, 1992. However, on the basis of the confessional statement, the adjudicating authority passed an order on 28th January, 1994 imposing penalty of Rs.3,50,000/- for contravention of Section 9(1)(b) of FERA, 1973 and Rs.1,00,000/- for contravention of Section 9(1)(a) of FERA, 1973. Further, the adjudicating authority confiscated the seized amount of Rs.14,50,000/- under the provisions of Section 63 of FERA and balance amount of Rs.30,000/- was directed to be

appropriated towards the recovery of penalty levied on the appellant. On appeal filed by the appellant, the appellate Tribunal dismissed the appeal inter alia on the ground that the confessional statement made by the appellant has been sufficiently corroborated by the documents seized from Mr.Punjabhai. Challenging the aforesaid order, present Appeal is filed.

4. Mr.Rao, learned counsel appearing on behalf of the appellant submitted that in Fera Appeal No.26 of 2007 similar questions raised by the appellant therein has been admitted by this Court on 19th June, 2007. He submitted that in the present case neither the documents seized from Punjabhai have been proved nor any opportunity was given to the appellant to cross examine the Officers who had recorded the confessional statement of the appellant. Accordingly, Mr.Rao submitted that the appellate Tribunal could not have drawn presumption against the appellant based on the document which were not proved in accordance with law. Moreover, by not offering the officers who had recorded the statement, the A.O. violated the principles of natural justice. Hence, the impugned order is liable to be quashed and set aside.

5. There is no merit in the above contention

because, firstly, the admission of Fera Appeal No.26 of 2007 has no relevance because, in the present case the authorities below have placed reliance on the confessional statement and not on the documents seized from Punjabhai.

6. In the present case, reference to the documents seized from Punjabhai have been made only to show the genuineness of the confessional statement made by the appellant. Therefore, the Tribunal was justified in comfirming penalty imposed upon the appellant which is based upon the confessional statement of the appellant.

7. The Apex Court in the case Hazari Singh V/s. Union of India reported in 110 E.L.T. 406 and in the case of Surjeet Singh Chhabra V/s. Union of India & Others reported in 1997 (1) S.C.C. 508, the Apex Court has held that the confessional statement made before the Customs Officer though retracted is an admission and binding on the person.

8. In this view of the matter, in the facts of the present case, where the confessional statement is corroborated by the seized documents, findings recorded by the Tribunal cannot be faulted.

9. Accordingly, in our opinion no substantial question of law arises in this appeal. Hence, the

appeal is dismissed with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FERA APPEAL NO.44 OF 2007

Date of decision : 5TH OCTOBER, 2007.

For Approval and signature

The Hon'ble Justice Mr.F.I.REBELLO

AND

The Hon'ble Mr. Justice J.P.DEVADHAR

1) Whether to be referred to the Reporter or not?)

2) Whether the Reporters of the Local papers may be allowed to see the Judgment/Order?)

******

Transcribed by : A.G. Kulkarni,
P.A. to J.P. Devadhar, J.